

1. Whether the NHSM Rule is arbitrary, capricious, or otherwise contrary to law.
2. Whether EPA's presumption in the NHSM that all non-hazardous secondary materials are solid waste is in excess of EPA's statutory authority under the Resource Conservation and Recovery Act, an abuse of discretion, arbitrary and capricious, and otherwise contrary to law.
3. Whether EPA's definition of the term "contaminants" in the NHSM Rule is arbitrary, capricious, or otherwise contrary to law.
4. Whether EPA's definition of the term "traditional fuels" in the NHSM Rule is arbitrary, capricious, or otherwise contrary to law.
5. Whether EPA's determination that non-hazardous secondary material is a waste even when it is being used in a continuous process in the generating industry itself is in excess of EPA's statutory authority under the Resource Conservation and Recovery Act, an abuse of discretion, arbitrary and capricious, and otherwise contrary to law.
6. Whether EPA's determination that a non-hazardous secondary material is a waste based solely on its contaminant levels, notwithstanding the fact that the material is not discarded, is in excess of EPA's statutory authority under the Resource Conservation and Recovery Act, an abuse of discretion, arbitrary and capricious, and otherwise contrary to law.

7. Whether EPA's determination that all non-hazardous secondary materials other than certain resinated wood and certain tire-derived fuel, are wastes when transferred to third parties is in excess of EPA's statutory authority under the Resource Conservation and Recovery Act, an abuse of discretion, arbitrary and capricious, and otherwise contrary to law.

8. Whether EPA's determination that a non-hazardous secondary material that has been discarded must undergo processing before it can be considered a non-waste is an abuse of discretion, arbitrary and capricious, and otherwise contrary to law.

9. Whether EPA violated the Regulatory Flexibility Act by failing to consider the economic impacts on small businesses of the NHSM Rule.

10. Whether EPA's determinations regarding the meaning of the term "contained gaseous material" in the NHSM Rule were arbitrary and capricious, an abuse of discretion, or otherwise contrary to law.

11. Whether EPA violated the Administrative Procedure Act by failing to provide adequate notice of and an opportunity to comment on EPA's determinations regarding the meaning of "contained gaseous material."

The American Forest & Paper Association, the American Wood Council, the Biomass Power Association, the Construction Materials Recycling Association Issues and Education Fund, the Hardwood Plywood & Veneer Association, and the

National Association of Manufacturers reserve the right to amend and supplement this statement of issues as necessary.

Respectfully submitted,

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Dated: July 8, 2011

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of July 2011, I caused a copy of the foregoing document to be served by the Court's CM/ECF system on all counsel of record in this matter.

/s/ Susan Parker Bodine
Susan Parker Bodine